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# In the Supreme Court of the United States

OCTOBER TERM, 1967

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No. 513

ANTHONY GRANZA and VINCENT FERRARA,
PETITIONERS

*v.*

UNITED STATES OF AMERICA

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT*

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## BRIEF FOR THE UNITED STATES IN OPPOSITION

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### OPINION BELOW

The opinion of the court of appeals is reported at 377 F. 2d 746.

### JURISDICTION

The judgment of the court of appeals was entered on May 24, 1967. A petition for rehearing was denied on July 27, 1967. The petition was filed on

August 18, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## QUESTIONS PRESENTED

1. Whether petitioners had standing to challenge the admissibility of evidence seized from co-conspirators who testified for the government.

2. Whether handwriting exemplars taken from petitioners after their arrest were properly used for the purpose of comparison.

3. Whether improper evidence was admitted to prove the conspiracy charged.

4. Whether the convictions should be reversed because a government witness, testifying at a later trial of a co-conspirator, made statements inconsistent with certain testimony which he gave at petitioner's trial.

## STATEMENT

Petitioners and others were charged, in an indictment returned in the United States District Court for the Southern District of Texas, with conspiracy to smuggle narcotics in violation of 21 U.S.C. 174. Petitioners were tried separately from the other defendants, and, following conviction, Granza was sentenced to imprisonment for twenty years and Ferrara to eighteen years. The court of appeals affirmed (Pet. App. B).

The evidence at trial showed the following events: Alerted by information received from informers that co-conspirator Adela Castillo was a carrier of nar-

cotics from Mexico, customs agents placed her under surveillance at the bus station in McAllen, Texas, where she bought a ticket to Houston and checked a blue suitcase to that destination. Unknown to Mrs. Castillo, the suitcase was searched at the bus station and found to contain heroin (R. 63-65, 138-139, 191-195, 209, 213-215, 223-229). After discovery of the heroin, the agents continued their surveillance of Mrs. Castillo during her trip to Houston and arrested her upon her arrival there. She agreed to cooperate with the agents (R. 65-67) by following out her original instructions. Accordingly, she checked in at the Texas State Hotel where she was later met by co-conspirator Abramson, to whom she delivered the narcotics. Thereupon he too was taken into custody and the suitcase seized (R. 69-73, 131-138). A later analysis of the contents of the suitcase established that it contained more than 22 pounds of almost pure heroin (R. 392-404).

A search of Abramson's person revealed a garage claim check from the Shamrock Hotel and what appeared to be a safety deposit box key (R. 74-75, 142). After learning that Abramson was registered at that hotel under the name of Milton Bennet, the agents obtained a warrant to search his room. The only fruit of this search was a memo pad with the name "H. Landi, 521" and the telephone number CA 7-2271 indented on the top slip of paper which they seized (R. 144-148, 172, 378-382). Harry Landi was the alias used by Ferrara when he registered at the Shamrock Hotel, and his room number was 521. CA

7-2271 was the telephone number of the Texas State Hotel (R. 70-72, 172).

Abramson was the government's chief witness. He related that he and George Moreno discussed various "smuggling deals" in Mexico City and then flew to New York City where they met with Joe Stassi (alias Joe Rogers) and made plans for the importation of narcotics from Mexico (R. 235-245). Thereafter, Abramson received instructions that a delivery was to be made and that he was to go to San Antonio to await it. At this time he was given a key to the trunk of a Buick in which the narcotics were to be found (R. 246-250).

Abramson flew to San Antonio and ultimately received the heroin (R. 252-258). He stated before the grand jury, and at the trial of petitioners, that after he received the "stuff" an unknown man picked it up from him in the hotel, and that on his return to New York he received his payment when both petitioners delivered money to him in a paper bag (R. 259-261; S.R. 1-15).[1]

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[1] In the later trial of co-conspirator Stassi, Abramson testified on cross-examination that a man known to him as "Archie" had picked up the package, spent the night with him, and accompanied him back to New York (S.R. 16-22 direct examination; S.R. 23-27 cross-examination). This discrepancy was the basis of a claim of perjury made by petitioners in their motion for rehearing in the court of appeals. In a *per curiam* opinion, the court of appeals stated that the false testimony regarding the identity of the pickup man in San Antonio could in no way prejudice petitioners (Pet. App. B). Abramson said he had been shown a picture but was unwilling to identify the man because the man had been in a lot of trouble.

Abramson related in some detail the substance of four other transactions. The procedure was essentially the same. A courier would deliver the heroin to Abramson at some hotel.[2] Abramson would then deliver the narcotics to other persons pursuant to directions communicated to him by Stassi. Abramson then received payment—always exactly the correct amount (R. 327)—from either or both petitioners (R. 265-274, 282-286, 287-291). Abramson's testimony was corroborated in detail by numerous witnesses who testified, on the basis of business records, about the activities of various participants in the conspiracy (R. 365-375, 426-435, 457-463, 468-475, 477-482, 486-494, 508-518, 520-527, 533-542, 548-550, 552-555, 561-567, 569-602, 610-613).

Abramson testified that after the Chicago deal he was not eager to proceed with the operation and that he did not believe the New York people (petitioners) wanted to continue either (R. 292, 294). Nevertheless an agreement was made for the last deal in Houston (R. 297). It was established that petitioner Ferrara registered in Houston under the name of "H. Landi" at the Shamrock Hotel at the same time Abramson ("Bennet") was staying there (R. 144-148, 601-602, 763-765).[3]

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[2] Two deliveries were made in New York, one in Chicago, in addition to the aborted delivery in Houston.

[3] It was also established that petitioner Granza stayed at the Executive House in Chicago when Abramson was staying there under the name of Rand. Granza's room was reserved by, and charged to, Milton Bennet (Abramson) (R. 533-542, 751-753). Abramson testified that he delivered the heroin to "Tony" Granza in Chicago (R. 287, 291).

## ARGUMENT

1. Petitioners claim that the heroin found in Mrs. Castillo's suitcase and the pad taken under warrant from Abramson's hotel room after his arrest were improperly admitted in evidence, on the ground that these items had been acquired as the result of illegal searches. This contention has no weight. The courts below properly held that petitioners had no standing to raise the issue. Assuming *arguendo* that both searches were unlawful, no proprietary or privacy interest of petitioners was invaded. With respect to Mrs. Castillo's suitcase, whatever rights of property or privacy were infringed were those of Mrs. Castillo, to whom the suitcase belonged. She could waive whatever objection she might wish to assert and agree, as she did, to cooperate with the government in the delivery of the suitcase and its contraband contents. The mere fact that petitioners were co-conspirators with Mrs. Castillo does not give them standing to assert a claim based on her personal right of privacy. See *Wong Sun* v. *United States*, 371 U.S. 471, 492; *Diaz-Rosendo* v. *United States*, 357 F. 2d 124, 132 (C.A. 9), certiorari denied, 385 U.S. 856.

Moreover, the inspection of the suitcase at the bus station was a valid search. The suitcase was known to have been carried in from Mexico and was in transit at the time it was examined. There was probable cause, on the basis of reliable information, to believe that it contained contraband which had just been smuggled into the United States. Customs agents have authority under 19 U.S.C. 1595 and 1595(a) to

examine, in the hands of a carrier, baggage reasonably believed to be carrying smuggled goods. *Romero* v. *United States*, 318 F. 2d 530 (C.A. 5), certiorari denied, 375 U.S. 946. Circumstances did not reasonably permit an attempt to secure a warrant, since Mrs. Castillo and the suitcase were due to leave the city shortly. The immediacy of the search to the known fact of importation from Mexico serves to distinguish this case from *Corngold* v. *United States*, 367 F. 2d 1 (C.A. 9).

Nor is there basis for petitioners' complaint concerning the pad taken from Abramson's room. That search and seizure took place under the authority of a warrant which the district court had properly sustained on a motion to suppress made by Abramson at his prior trial (R. 148-159). The warrant was based on ample probable cause. The affidavit for the warrant recited that Abramson had obtained the narcotics and that items found on his person at the time of arrest indicated that he was occupying the hotel room sought to be searched. This affidavit was thus sufficiently specific. *United States* v. *Ventresca*, 380 U.S. 102. Moreover, petitioners lack the requisite status to justify relitigating the validity of the search of Abramson's hotel room in which they had no protected interest.

2. When petitioners were arrested on June 15, 1963, each was told of his right to counsel (R. 637, 681, 697-704). Each was required to complete a personal history questionnaire as part of the routine processing of arrested persons (R. 644, 659-660, 669,

698, 717). A secondary purpose was to obtain exemplars of petitioners' handwriting (R. 685-686, 710-711). These exemplars were used to show that petitioners had registered at two hotels, in corroboration of Abramson's testimony (R. 751-753, 763-765).

A contention that the government may not take handwriting exemplars from persons already indicted, in the absence of their counsel, was rejected in *Gilbert* v. *California*, 388 U.S. 263. Since such exemplars are not testimonial communication, this Court ruled, there is no need for the presence of counsel. It is also clear that the admission of such exemplars against each petitioner individually presented no danger of confusion or prejudice and presented no basis for a severance (See Pet. 15-16).

3. On the basis of Abramson's testimony that he was reluctant, and he thought petitioners were reluctant, to continue after the Chicago delivery, petitioners argue that the government should not have been allowed to introduce evidence of overt acts 33-44 (the Houston delivery) because the conspiracy had terminated. There is, however, no indication that any members withdrew from the conspiracy after the Chicago delivery, and in fact the evidence is overwhelming that the conspiracy did in fact continue through the events in Texas. The evidence reveals that petitioner Ferrara came to the Shamrock Hotel in Houston, apparently to receive delivery of the heroin Abramson was to have obtained from Mrs. Castillo. Thus, the same plan that was utilized in previous smuggling transactions remained operative.

The most that can be said for petitioners' argument is that the conspiracy terminated as to Mrs. Castillo and Abramson at the time of their respective arrests. While statements or admissions of one conspirator after the end of a conspiracy are inadmissible as against other co-conspirators, *Delli Paoli* v. *United States*, 352 U.S. 232, 237; *Krulewitch* v. *United States*, 336 U.S. 440, no such evidence was admitted here. The testimony was only as to the acts of Mrs. Castillo as they affected Abramson's conduct. Acts of a co-conspirator, after the conspiracy has ended as to him, may be admitted to show the nature of the conspiratorial scheme. *Lutwak* v. *United States*, 344 U.S. 604, 617-619.

Petitioners also claim that the district court erred in admitting certain evidence concerning acts not alleged in the indictment. Petitioners object to Abramson's testimony regarding his conversations with George Moreno and Joe Stassi leading up to the formation of the conspiracy (R. 237-243), and to the admission of a business record of Eastern Airlines (Ex. 39), with testimony by an airlines employee (R. 462-466), showing that a co-conspirator, Stassi, took a certain trip on November 20. The government is not confined, as petitioners seem to believe, to proof only of the overt acts alleged in the indictment.[4] Particularly with respect to the nature of the conspiracy, it is permissible to adduce any relevant evidence tending to show the circumstances from which agreement

[4] The court did, on petitioners' objection, strike evidence as to a delivery in Newark not alleged in the indictment.

may be inferred. *Reese* v. *United States*, 353 F. 2d 732, 733-744 (C.A. 5). There is thus no merit in petitioners' contention that this evidence tending to corroborate Abramson's testimony was improperly introduced.

Petitioners' objection to the order of proof is insubstantial. It is of no moment that some evidence of overt acts (such as the finding of heroin in Houston) may have been introduced before evidence showing that petitioners were members of a conspiracy. By the close of evidence this testimony was shown to be relevant to the conspiracy in which (as the evidence also demonstrated) petitioners participated. In this case, where petitioners were the only conspirators tried, there was no danger of confusion.

4. As noted in the statement, when Abramson (at petitioners' trial) was describing the first San Antonio delivery, he testified that the heroin for which petitioners subsequently paid him in New York was picked up by an unknown man. At the subsequent trial of co-conspirator Stassi, Abramson admitted on cross-examination that the man, who had picked up the heroin, and known to him as "Archie", spent the night with him, and accompanied him to New York. In an affidavit filed in the court of appeals in response to a petition for rehearing based on this discrepancy, the Assistant United States Attorney stated that before petitioners' trial Abramson had denied knowing the person to whom heroin was delivered in San Antonio; that although the government, from independent evidence, suspected that the man was Ran-

dazzo (known as Archie), it could not establish that fact; that Abramson refused to discuss the facts before petitioners' trial; that later, in preparation of the Stassi trial, Abramson said that the man was only a minor figure, but, when pressed admitted knowing Archie. The court of appeals properly held that Abramson's false denial at petitioners' trial that he knew the man who accepted the heroin did not warrant a new trial. Abramson's attempt to keep confidential the identity of the person accepting the heroin was in no way crucial to the government's case against petitioners. Abramson's testimony was abundantly corroborated in many ways. Thus, his false testimony in this respect casts no doubt on the sufficiency of the evidence of petitioners' guilt.

## CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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SEPTEMBER 1967

☆ U. S. GOVERNMENT PRINTING OFFICE: 1967 276323 233